

IN THE SENATE OF THE UNITED STATES.

MAY 28, 1858.—Ordered to be printed.

Mr. MASON submitted the following

REPORT.

*The Committee on Foreign Relations, to whom was referred the resolution of the Senate instructing them "to inquire whether any legislation is necessary to enable the President of the United States to protect American vessels against British aggression in the Gulf of Mexico or elsewhere," and to whom has also been referred "the message of the President of the United States communicating, in answer to a resolution of the Senate, information concerning the recent search or seizure of American vessels by foreign armed cruisers in the Gulf of Mexico," have had the same under consideration, and now report:*

The documents accompanying the message of the President show a series of aggressive acts on the commerce of the United States in the Gulf of Mexico and off the West India islands, by the naval forces of Great Britain, of a character so marked and extraordinary as to have fixed the attention of the country.

American vessels pursuing the paths of lawful commerce on the high seas, or passing near the American coast, from one domestic port to another, under the flag of their country, have been pursued, fired into, and compelled to stop, by the public force of a foreign power; questioned as to their destination, their cargo, and the character of their crews; required to submit to an examination of their sea papers, and to a scrutiny into the objects and purpose of their voyage.

In another instance, American vessels anchored in the harbor of a friendly power, at the port of Sagua la Grande, in the Island of Cuba, have been subjected to a police inquisition by the same foreign power, and in like manner required to exhibit their papers, and to submit to question as to their destination, the cause of their absence from home, and the number and character of their crews.

It would appear from the letter of the consul of the United States at Havana (a document accompanying the message) that no less than fifteen American vessels, lying in the harbor, or in port at Sagua la Grande, were made to undergo this humiliating system of espionage; whilst six vessels on the high seas, in the Gulf of Mexico, bearing

their country's flag, were, as above stated, by actual exhibition and use of force, endangering, in some instances, the lives of those on board, compelled to stop, and submit to detention, until a boarding officer was satisfied in such questions as it was his pleasure to put.

Besides the instances above cited, officially communicated with the President's message, in reply to a call of the Senate, each successive arrival from the infested quarter brings intelligence of new and additional aggressions of like character, committed by the same power, on vessels bearing the flag of the United States.

It has occasionally happened heretofore, under circumstances of misapprehension, a misconstruction of orders, or from other and like causes, that vessels of the United States have been subjected by the armed force of a foreign power to visitation and search, in violation of international law, and in derogation of the independence of our flag; and in such isolated cases the honor of the country may have been sufficiently vindicated by a disclaimer of intended wrong, or by rebuke of the officer offending. But the continuous and persevering character of the aggressions now brought to the notice of the country, committed by a power with whom we are at peace, and almost within sight of our shores, are sufficient to arouse the just indignation of the country, and call, in the opinion of the committee, for the most prompt and efficient measures, to arrest at once, and to end finally and forever, the commission of like indignities to our flag.

The documents accompanying the message disclose the fact that these acts of visitation and examination of American vessels were sought to be justified under the plea of necessity for the suppression of the slave trade, supposed to be or actually carried on between Africa and the island of Cuba.

The committee will not go into any inquiry in reference to such alleged necessity. It is sufficient for them to know that the assent of the United States, although often invoked, has never been yielded to any such system of police on the seas. They rest on the position not to be controverted, that, by no principle of international law, can a vessel under the flag of its country be visited or detained on the high seas, in time of peace, by any foreign power, under any pretext or for any purpose whatever, without the consent of those over whom the flag waves.

Without going at large into the questions heretofore involved as to the rights of independent nations on that common highway of the world, the open sea, the committee deem this, nevertheless, a fit occasion to declare the principles always maintained by the United States, as regulating the use of the open or high seas in time of peace, and from which are derived rights to the people of the United States admitting of no restraint or qualification and to be maintained at whatever cost.

There is no right of visitation, far less of search, to be exercised in time of peace, by any nation, on the ships or vessels of other nations, nor can there be, so long as the laws of the civilized world touching the freedom of the seas are respected by civilized men. Such claim, therefore, having no foundation in law, or in the comity of nations, can never be tolerated by an independent power, but in derogation of

her sovereignty. Neither is there any distinction to be drawn in the claim of *right*, between visitation at sea by the armed vessels of a foreign power, when unattended by examination or search, or such visitations when so attended.

The offence and violation of public law consists in the *visitation*, without regard to its purpose, when claimed as a *right*, against the will of the party subjected to it; were it otherwise, there would follow, of course, the correlative right to arrest and detain the vessel until the visitation is effected.

The committee find these principles admitted and enforced by the opinions and the decisions of the most eminent judicial authorities, both in this country and in Great Britain.

(The case of the "*Mariana Flora*," in the Supreme Court of the United States, reported in 11 Wheaton, page 1. And in England, the case of "*Le Louis*," decided by Lord Stowell in 1817, and reported in Dodson's Admiralty Reports, vol. 2, page 210.)

They are founded in two simple elemental principles of public law: first, in the equality of all independent states; and second, the common use by all recognized states of the open sea as a highway in time of peace.

Such are the rights and immunities of our citizens navigating the ocean, which have been flagrantly violated and outraged by armed vessels of a foreign power in time of profound peace, and in some instances almost within sight of our own shores.

Indignant as the American people are, and ought to be, at the character and persistent repetition of such aggressions, yet their occurrence and gravity will opportunely supply the occasion to end, now and forever, all future question as to this right of visitation at sea between the United States and the offending power.

And the committee refrain only from recommending at once such additional legislation as would be most effectual to protect the commerce of the country from aggressions of the character thus brought to the notice of the Senate, from the fact that the President (as shown by the letter of the Secretary of the Navy, accompanying the message) has already ordered all the disposable naval force of the country into the infested quarter, with orders "to protect all vessels of the United States on the high seas from search or detention by the vessels-of-war of any other nation." These are preventive measures only, and temporary in their character, but, in the judgment of the committee, go to the full extent of the power of the Executive in the absence of legislative provision. It is believed, however, they will arrest for the present further like offences in the quarter whence they have proceeded.

It appears further, from these documents, that the altered state of the relations between the United States and Great Britain, which must arise from this aggressive conduct of her armed vessels, has been already brought to the notice of that power, by communications from the Secretary of State, addressed both to the British minister here and to the minister of the United States at London.

It cannot be known, until the result of these communications is laid before Congress, how far the acts in question will be avowed or disclaimed by the government held responsible. It is the earnest

hope of the committee that the course that government may adopt will be of a character to satisfy the just demands of this government, and, at the same time, to furnish a guaranty against the repetition of the offence. Nothing short of this, in the opinion of the committee, will be compatible with peaceful relations between the two countries.

In the present posture of the affair, therefore, the committee forbear from recommending any additional legislation to enable the President to protect American vessels on the high seas from the aggression of foreign powers. But they will not forbear the declaration, that such legislation must be promptly supplied, should the result show that it is needed to afford instant and full immunity to our vessels, engaged in lawful commerce on the high seas, from all arrest, molestation, or detention, under any pretext or from any quarter.

In conclusion, the committee recommend the adoption of the following resolutions :

*Resolved, as the judgment of the Senate,* That American vessels on the high seas, in time of peace, bearing the American flag, remain under the jurisdiction of the country to which they belong ; and, therefore, any visitation, molestation, or detention of such vessels by force, or by the exhibition of force, on the part of a foreign power, is in derogation of the sovereignty of the United States.

*Resolved,* That the recent and repeated violations of this immunity, committed by vessels-of-war belonging to the navy of Great Britain, in the Gulf of Mexico and the adjacent seas, by firing into, interrupting, and otherwise forcibly detaining them on their voyage, requires, in the judgment of the Senate, such unequivocal and final disposition of the subject by the governments of Great Britain and the United States touching the rights involved, as shall preclude, hereafter, the occurrence of like aggressions.

*Resolved,* That the Senate fully approves the action of the Executive in sending a naval force into the infested seas with orders "to protect all vessels of the United States on the high seas from search or detention by the vessels-of-war of any other nation." And it is the opinion of the Senate, that, if it becomes necessary, such additional legislation should be supplied in aid of the executive power as will make such protection effectual.